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BEFORE THE
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF:)
)
ROCKWELL UTILITIES, LLC)
) No. 06-0522
Petition for a Certificate of)
Public Convenience and Necessity)
to provide water and sanitary)
sewer service to parcels in Lake)
County, pursuant to Section 8-406)
of the Public Utilities Act)
)
ROCKWELL UTILITIES, LLC)
) No. 06-0523
Petition for a Certificate of)
Public Convenience and Necessary)
to provide water and sanitary)
sewer service to parcels in Lake)
County, pursuant to Section 8-406)
of the Public Utilities Act)

Chicago, Illinois

June 1, 2007

Met, pursuant to adjournment, at

10 o'clock a.m.

BEFORE :

MS. LESLIE HAYNES and
MR. TERRANCE HILLIARD,
Administrative Law Judges

1 APPEARANCES:

2 SONNENSCHNEIN, NATH & ROSENTHAL, by
3 MR. PHILLIP CASEY
4 233 South Wacker Drive, Suite 7800
Chicago, Illinois
5 appearing for Rockwell Utilities, LLC.;

6 MR. MICHAEL R. BOROVIK
7 160 North LaSalle Street, Suite C-800
Chicago, Illinois 60601
8 appearing for staff of the Illinois
Commerce Commission

9 MS. LINDA BUELL
10 527 East Capitol Avenue
Springfield, Illinois 62701
11 appearing for staff of the Illinois
Commerce Commission

12 KATTEN, MUNCHIN, ROSENMAN, LLP., by
13 MS. MONICA J. MOSBY and
MS. NANCY J. RICH
14 525 West Monroe Street
Chicago, Illinois 60661
15 appearing for Northern Moraine
Wastewater Reclamation District

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18 MMWRD FOR IDENTIFICATION IN EVIDENCE

19	Nos. 1.0	217	217
	6.0	217	217
20	5.0	218	218
	2.0	224	224
21	4.0	224	224

22

1 JUDGE HAYNES: We will now call 06-0522 and
2 06-0523. These are the consolidated petitions of
3 Rockwell, LLC.

4 May I have appearances for the
5 record, please.

6 MR. CASEY: On behalf of Rockwell Utilities,
7 Phillip Casey and Sarah Galioto of Sonnenschein,
8 Nath & Rosenthal, 233 South Wacker Drive, Suite
9 7800, Chicago, Illinois, 60606.

10 MS. BUELL: Appearing on behalf of staff
11 witnesses of the Illinois Commerce Commission, Linda
12 M. Buell, 527 East Capitol Avenue, Springfield,
13 Illinois, 62701.

14 MR. BOROVIK: Also appearing on behalf of
15 Commission staff witnesses, Michael R. Borovik, B -
16 like Boy -o-r-o-v - like Victor - i-k, 160 North
17 LaSalle Street, Suite C-800, Chicago, Illinois,
18 60601.

19 MS. RICH: Appearing on behalf of the intervenor,
20 the Northern Moraine Wastewater Reclamation
21 District, Nancy J. Rich; Katten, Muchin, Roseman,
22 LLP, 525 West Monroe, Suite 1900, Chicago, Illinois

1 MS. MOSBY: Appearing on behalf of Northern
2 Moraine Wastewater Reclamation District, Monica J.
3 Mosby; Katten, Muchin, Rosenman, LLP, 525 West
4 Monroe, Chicago, Illinois, 60661.

5 JUDGE HAYNES: Are there any further appearances?

6 (No verbal response.)

7 Let the record reflect there are none.

8 (No further appearances.)

9 I would like just to note for the
10 record that Judge Hilliard has been added as a
11 co-ALJ in this proceeding and in the event I'm
12 unavailable to complete the proceedings, and other
13 than that, we're here on an evidentiary hearing
14 today, but there are a couple preliminary matters
15 that we need to deal with first.

16 MR. HILLIARD: Before you get into that, let me
17 indicate for the record that I discovered this
18 morning that Mr. Carroll, who's a witness in this
19 proceeding, is the same Mr. Carroll who lives across
20 the street from me.

21 We are not acquaintances. We're not
22 social friends. I don't think it is relevant to the

1 outcome of the case.

2 JUDGE HAYNES: Okay. So I guess first we can
3 talk about the E-mail I received this morning from
4 Ms. Mosby -- I guess that was yesterday afternoon --
5 regarding Rockwell's response to the interrogatories
6 or lack of response to interrogatories.

7 Would The District like to explain
8 further?

9 MS. MOSBY: We did receive a response from
10 Rockwell last night.

11 JUDGE HAYNES: Okay.

12 JUDGE HILLIARD: The issue is resolved then?

13 MS. RICH: We'll say it's resolved until we have
14 time to go through and see if we have any issues.
15 Obviously, it's 10 o'clock in the morning here on
16 Friday. We have got a response to a number of
17 documents last night while we were preparing for
18 hearing. I think it's very premature to determine
19 for certain if the issue is resolved, but we will
20 look at it immediately, and if -- after the hearing
21 if we have any issues, we'll notify counsel and the
22 Commission by Monday.

1 JUDGE HAYNES: Okay. Next thing would be the
2 motions to strike filed by both staff and Rockwell
3 Utilities, and The District wants to respond to
4 those this morning?

5 MS. RICH: The District instead is requesting a
6 reasonable time to file a written response to more
7 than 20 pages of motions to strike that were filed
8 just the other day by Rockwell and the staff. The
9 effective granting of these motions would be to
10 deflect the dismissal of The District's case because
11 Rockwell and staff seek to exclude the testimony of
12 The District's primary witness, Ken Michaels, which
13 would, if granted, leave The District without a
14 single exhibit in this case as well.

15 There are very serious due process
16 concerns with telling The District late on Thursday
17 in the E-mail that we received from the Commission
18 that we could respond by either filing a brief early
19 this morning, Friday, or responding with arguments
20 on the record at this morning's hearing. That is
21 less than one business day to respond to 20 pages of
22 briefs seeking to strike virtually all of The

1 District's case and all of its exhibits, and that
2 one business day is the day before the hearing when,
3 of course, we were busy preparing for the hearing.

4 We all know that the ALJs in this case,
5 one of whom was appointed just this week, cannot
6 issue the recommendation to the Commission in this
7 matter until they have read the transcript of
8 today's hearing and consider the evidence that will
9 be presented today.

10 We cannot do that until the court
11 reporter, who's transcribing these proceedings
12 today, prepares, reviews, and completes the
13 transcript, and provides it to the ALJ, and the
14 parties, and we all have a chance to review it as
15 well, and the new ALJ must become familiar with the
16 record which, when we looked at the E-docket
17 yesterday, already contained approximately 100
18 different docket entries in the underlying documents
19 for each of those individual 100 items.

20 We all know that's not going to happen
21 today, so there is no reason to impose a Draconian
22 deadline this morning on The District, and, just the

1 so the record is clear, it's important to note that
2 both Rockwell and the staff have known for well over
3 a month The District's president, Mr. Michaels, is a
4 witness in this case, that is when he filed his
5 direct testimony on the 20th of April.

6 Today is June 1st. Both Rockwell and
7 staff waited until the very last minute, that is May
8 30, to argue that Mr. Michaels' testimony is barred
9 due to his filing of an appearance as co-counsel to
10 my firm, Katten, Muchin, Rosenman, on March 9th.

11 The last minute arguments of Rockwell
12 and the staff are legally and factually wrong.
13 Lawyer's testimony is barred only when it would hurt
14 their clients and here it's just the opposite is
15 true.

16 Mr. Michaels is the only district
17 witness who can provide the comprehensive testimony
18 that The District is presenting, including
19 interaction of the various requirements to which The
20 District and utilities are subject and how in
21 practice these requirements work together and
22 implemented in a consistent way.

1 Also, the law is clear that if Rockwell
2 and the staff are entitled to any remedy at all in
3 their motions that is withdrawal of Mr. Michaels'
4 appearance.

5 As to the testimony of George Roach,
6 Rockwell and the staff incorrectly argued that his
7 testimony about rates when it's clear that his
8 testimony goes to the heart of the central issue in
9 this case, least cost under Section 8-406.

10 Due process requires that The District
11 must be allowed a reasonable time to respond in
12 writing.

13 MS. BUELL: Your Honors, staff would just like
14 to note for the record that staff and Rockwell filed
15 its pretrial motion on the date that was established
16 at the last status hearing. The District didn't
17 object to it then and it is not appropriate for The
18 District to object to it now.

19 Also, the parties have and staff have
20 initial briefs due on June 15th, so putting off a
21 decision in this matter is not going to work under
22 the present schedule.

1 Also, from Ms. Rich's comments, it
2 sounds like The District is prepared to make its
3 oral argument today. In fact, staff believes she's
4 already done so.

5 MS. RICH: We disagree strongly. We have 20
6 pages of briefs, and while some people might argue
7 that I have spoken at length, people who know the
8 length of the brief that we should be entitled to
9 file, if let's say it's a 20-page brief, we would
10 have been here a long time, and, quite frankly, we
11 have not had the opportunity to respond.

12 The other point that I make is very,
13 very important in this case is that going and
14 looking back over the record, this case has been
15 pending for a very long time and suddenly we had an
16 emergency pretty much at the last minute here
17 because, quite frankly, Rockwell's own failure to
18 move the case forward.

19 They have had their temporary
20 certificate since last August, why we should be in
21 this position at this point is not the fault of The
22 District. Rockwell needs to move its case forward,

1 they didn't, and to -- well, the Commission is
2 clearly considering the record in this case to not
3 allow The District until say the end of next week to
4 file its brief, again denial of due process.

5 JUDGE HAYNES: Mr. Casey, do you have anything
6 you want to say?

7 MR. CASEY: Well, your Honor, Rockwell concurs
8 with staff's position in response to or reply to
9 Ms. Rich's response.

10 ALJ Haynes did, in fact, impose or
11 select a date for which to file pretrial motions.
12 No party objected. Each party was fully aware of
13 the time frame of the limited amount of days between
14 the due date and the time for filing.

15 Ms. Rich goes at length to talk about
16 process and the inability to formulate a response to
17 our motion, then goes on to go point by point as to
18 the substance of the response.

19 The argument that somehow Rockwell is
20 to blame for their -- NoMo's inability to respond
21 here today is the same tired argument that we've
22 heard now for quite sometime. It's Rockwell's fault

1 that "NoMo" would enter into a confidentiality
2 agreement and, therefore, delay "NoMo" in receiving
3 confidential documents. It's Rockwell's fault that
4 they don't have enough time to respond to a motion
5 to strike -- staff's motion to strike. It's a tired
6 argument and it doesn't apply.

7 MS. RICH: In response, all we'll say is there's
8 clearly time built into the schedule to do this. As
9 everyone knows, the new commissioner has to get
10 familiar with the proceedings, and he'll clearly be
11 reading documents long beyond the end of next week,
12 and one of those documents ought to be from a due
13 process perspective to NoMo's response.

14 JUDGE HILLIARD: We'll be right back.

15 (A brief recess was
16 taken.)

17 JUDGE HAYNES: Okay. Let's go back on the
18 record. After discussing with Judge Hilliard, we
19 have decided to allow The District an opportunity to
20 respond in writing and, obviously, other parties can
21 reply in writing, and, for the record procedurally
22 today, then we'll go ahead as though the --

1 JUDGE HILLIARD: We're deferring ruling on the
2 motion.

3 JUDGE HAYNES: We are deferring ruling on the
4 motion and we'll go ahead with the cross of any
5 witnesses and, if necessary, when we rule, those
6 appropriate parts of the transcript will be
7 stricken, so I believe you indicated you can respond
8 by Monday.

9 MS. RICH: I asked until the end of next week.

10 JUDGE HAYNES: And initial briefs are due June
11 15th. Is that --

12 MS. BUELL: That's your Honors' initial briefs
13 June 15th, reply briefs June 22nd.

14 MS. RICH: So then why don't we respond on or
15 before June 8th and then the other parties can
16 incorporate their replies into their June 15 briefs.

17 JUDGE HAYNES: Because then they have to -- if
18 any of the testimony is stricken, that would -- the
19 matter needs to be decided before briefs so that
20 parties know what to include in their briefs, so I
21 have to say Monday and Tuesday at the latest for
22 your response.

1 MS. RICH: We'll agree to Tuesday.

2 JUDGE HAYNES: And replies -- so that would be
3 Tuesday, June 5th, replies by Thursday, June 7th.
4 Okay. So --

5 MS. BUELL: Your Honors, is it possible that we
6 could have until June 8th, even noon on June 8th on
7 Tuesday would be helpful?

8 JUDGE HAYNES: That's okay.

9 MS. BUELL: Thank you.

10 JUDGE HAYNES: So responses June 5th and replies
11 noon on June 8th.

12 MR. CASEY: Your Honors, with respect to a couple
13 of things, one's timing, on the June 5th -- well,
14 our replies due on June 8th at noon.

15 JUDGE HAYNES: Uh-huh.

16 MR. CASEY: Service of our replies to the parties
17 by noon. I ask that "NoMo" or a deadline be imposed
18 upon the June 7th time of service of the responses
19 no later than 5 p.m., on that day.

20 JUDGE HAYNES: I have to agree that service by
21 5 p.m., also be sure to serve the ALJs with this
22 particular motion, which I believe The District has

1 failed to do it.

2 MS. RICH: Will do.

3 MR. CASEY: Secondly, your Honors, I would ask
4 that your Honors reconsider your ruling, at least in
5 one respect, and that's on the issue of whether or
6 not Mr. Michaels can continue wearing three hats and
7 whether he can continue to act as counsel, witness,
8 and a client.

9 The reason we're asking for that is the
10 unfairness and prejudice to Rockwell allowing them
11 to do so with three hats.

12 Ms. Rich has indicated in her response
13 that she's fully aware that one of the remedies when
14 a lawyer becomes a witness is withdraw as counsel
15 for the case.

16 I ask your Honors to reconsider the
17 ruling, proponents of the ruling on that particular
18 issue, and instruct or order Mr. Michaels to
19 withdraw as counsel for the case, as well as bar him
20 from participating at the counsel table during the
21 pendency of this proceeding.

22 MS. RICH: Your Honors, my response is that

1 Mr. Michaels is not sitting here at the counsel
2 table with us. If we thought that would resolve the
3 issue as the clear remedy under Illinois law, we
4 would be glad to withdraw Mr. Michaels' appearance.

5 The real distinction in this case is
6 that if you all remember I wasn't here, but
7 according to the transcript and Ms. Mosby, the way
8 it appeared to me is that Mr. Michaels showed up
9 when our computer system had a glitch at the time
10 change and Ms. Mosby and I were not here.

11 Mr. Michaels was there and was actually
12 requested to enter his appearance as counsel,
13 otherwise, told he couldn't speak, and that's the
14 only reason he did that, so Katten, Muchin, Roseman
15 has always been the law firm representing The
16 District in this matter, and withdrawing
17 Mr. Michaels' appearance, if that would resolve the
18 issue of his acting as a witness, is appropriate and
19 we would do that.

20 JUDGE HILLIARD: I think Mr. Casey's comment was
21 that it would -- that he's wearing three hats and
22 they prefer he wore one or the two.

1 MS. RICH: Mr. Casey's own client is wearing a
2 couple of hats as a witness and client. Kirk is the
3 sole member of Rockwell Utilities, and that's
4 Mr. Carroll, so Mr. Carroll is wearing two hats.
5 I'll be glad to get Mr. Michaels down to two hats by
6 removing him as counsel on an even field.

7 JUDGE HAYNES: You have something you want to
8 say?

9 MS. BUELL: Your Honors, as mentioned in staff's
10 motion to strike, Mr. Michaels has not only entered
11 an appearance, spoken on the status hearing, but
12 continues to speak as an attorney representing The
13 District at status hearings, so staff's preference
14 would be that if he removed any hat, it would be
15 that of a witness because he's already served
16 repeatedly as counsel.

17 JUDGE HAYNES: I think the transcript is clear
18 what role Mr. Michaels has played, and we're not --
19 we're reserving the ruling on the overall motion to
20 strike; however, we agree with Mr. Casey and it
21 would be -- it would be inappropriate for
22 Mr. Michaels to act as an attorney at today's

1 proceeding.

2 MS. RICH: Again, as you can see, that's not what
3 he's doing here today, so there is no issue and
4 we'll agree to that.

5 JUDGE HAYNES: Are there any other preliminary
6 matters?

7 (No response.)

8 Okay. Mr. Casey, would you like to
9 call your first witness.

10 MR. CASEY: Your Honors, I call John Carroll.

11 JUDGE HAYNES: Good morning. Mr. Carroll raise
12 your --

13 MR. CARROLL: Good morning.

14 JUDGE HAYNES: Raise your right hand.

15 (Witness sworn.)

16 Thank you.

17 JOHN P. CARROLL,
18 called as a witness herein, having been first duly
19 sworn, was examined and testified as follows:

20

21

22

1 DIRECT EXAMINATION

2 BY

3 MR. CASEY:

4 Q. Please state your full name for the record.

5 A. John P. Carroll.

6 Q. Mr. Carroll, who are you employed by?

7 A. The Kirk Corporation.

8 Q. What is your position with Kirk?

9 A. I'm president and chief executive officer.

10 Q. In this proceeding you compiled -- submitted
11 three pieces of testimony, is that correct --

12 A. That is correct.

13 Q. -- the revised -- excuse me. Rockwell
14 Exhibit 1.0R, the Revised Direct Testimony of John
15 P. Carroll?

16 A. Yes.

17 Q. Mr. Carroll, if I were to ask you questions
18 that's contained in your revised direct testimony
19 today and were also set forth in your exhibit, would
20 your answers be the same today?

21 A. There are a few clarifications I would like
22 to make.

1 MR. CASEY: All right. Your Honors, may I
2 approach?

3 JUDGE HAYNES: Yes.

4 MR. CASEY: We have an informal errata sheet,
5 some corrections to Mr. Carroll's revised direct,
6 his rebuttal, as well as surrebuttal. All of these
7 corrections are really to account for the ruling by
8 ALJ Haynes withdrawing the issue regarding rates and
9 the filing of the revised amended petition.

10 Procedurally, your Honors, we can state
11 on the record what those changes are or, if there's
12 no objection, we can simply file our electronic
13 errata assuming there are no further changes to the
14 testimony based on cross today.

15 JUDGE HAYNES: It's fine with me if it's just
16 submitted electronically.

17 JUDGE HILLIARD: Maybe you should make -- you
18 want to give that a number -- exhibit number of some
19 sort, your errata sheet --

20 MR. CASEY: You know, certainly --

21 JUDGE HILLIARD: -- or identify it somehow other
22 than errata sheet?

1 JUDGE HAYNES: We can call it Errata 2, 1.0R and
2 file it on e-docket today.

3 MR. CASEY: Q. All right. Mr. Carroll, I show
4 you what's been marked for identification as
5 Rockwell Errata 1.0. Are you familiar with the
6 document?

7 A. Yes, I am.

8 Q. And do those reflect the changes that you
9 would like to make to all three pieces of your
10 testimony in this matter?

11 A. Yes, it does.

12 MR. CASEY: Your Honors, then we'll file this
13 afternoon an electronic copy of the errata.

14 With respect to Rockwell Exhibit 1.0R,
15 Rockwell would submit Mr. Carroll for
16 cross-examination and ask that that exhibit be
17 admitted.

18 MR. CASEY: Q. Mr. Carroll, did you prepare
19 rebuttal testimony of John P. Carroll, Exhibit 5.0?

20 A. Yes.

21 Q. And other than the changes reflected in
22 Rockwell Errata 1.0, if I were to ask you questions

1 contained in that document, would your answers be
2 the same today as they were when you prepared that
3 rebuttal testimony?

4 A. Yes.

5 MR. CASEY: At this time we move also for the
6 admission of Rockwell Exhibit 5.0 subject to cross.

7 MR. CASEY: Q. And, Mr. Carroll, did you prepare
8 surrebuttal testimony of John P. Carroll, Rockwell
9 Exhibit No. 9?

10 A. Yes.

11 Q. And subject to the one change beginning on
12 Rockwell Exhibit -- Errata Exhibit No. 1, if I were
13 to ask you all the questions contained within that
14 surrebuttal testimony today, would your answers be
15 the same as they were in that testimony?

16 A. Yes.

17 MR. CASEY: At this time I move for admission of
18 Rockwell Exhibit 9.0.

19 JUDGE HAYNES: Is there any objection to
20 admitting the four exhibits, 1.0R for the errata, to
21 1.0, 5 through 9?.

22 MS. BUELL: No objection from staff, your Honors.

1 MS. MOSBY: No objection from The District.

2 JUDGE HAYNES: Those exhibits, as previously
3 filed on e-docket, and the errata will be filed
4 today, are admitted into the record.

5 (Whereupon, Rockwell
6 Exhibit Nos. 1.0, 1.0R,
7 5.0, and 9.0 were
8 previously marked for
9 identification and
10 received in evidence.)

11 Who would like to go first with
12 cross-examination?

13 MS. BUELL: Your Honors, staff has no cross for
14 this witness.

15 MS. MOSBY: The District has a few questions,
16 your Honors.

17 JUDGE HAYNES: Proceed.

18 CROSS EXAMINATION

19 BY

20 MS. MOSBY:

21 Q. Good morning, Mr. Carroll. I'm Monica
22 Mosby, one of the attorneys for Northern Moraine

1 Wastewater Reclamation District. How are you?

2 A. Good morning.

3 JUDGE HILLIARD: Make sure you come close to the
4 mike so people on the phone can hear, too.

5 MS. MOSBY: Okay. Is this okay?

6 JUDGE HAYNES: We'll see.

7 MS. MOSBY: Can you hear me?

8 MR. CASEY: See if it's even on.

9 MS. MOSBY: I don't think it's on. Hello. Hello.
10 There we go. Okay.

11 MS. MOSBY: Q. Okay. Mr. Carroll, I have a few
12 questions for you. I'm going to refer to Northern
13 Moraine Wastewater Reclamation District as "The
14 District." Is that okay?

15 A. (Witness nodded head.)

16 Q. According to your revised testimony, and I'm
17 looking at Page 5, Lines 107 through 118, and you
18 discuss a geographic area that Rockwell seeks to
19 serve and you state that that area is outlined in
20 JPC 1.2 and 1.3, which are maps, I believe a legal
21 description of -- legal description of the area
22 where Rockwell seeks to serve. It's Page 5 of your

1 revised --

2 A. Revised direct?

3 Q. Yes, your revised direct.

4 A. Okay.

5 Q. 107 through 118 you discuss the area -- the
6 geographic area that Rockwell seeks to serve and you
7 state that it's described in JPC 1.2 and 1.3.

8 A. That's correct.

9 Q. Are you familiar, Mr. Carroll, with the
10 Northeastern Illinois Planning Commission sometimes
11 referred to as NIPC, N-I-P-C, or now commonly called
12 Chicago Metropolitan Agency for Planning?

13 A. I'm familiar with that organization, yes.

14 Q. Okay. From this point here on out I'm going
15 to call it NIPC just for simplicity.

16 Are you aware that The District filed a
17 facilities plan amendment with NIPC?

18 MR. CASEY: Your Honor, at this time I'm going to
19 object. So the record is clear, this is beyond the
20 rebuttal testimony prepared by Mr. Carroll. There's
21 no discussion of FPA, or NIPC, or anything else in
22 his rebuttal raised by Mr. Carroll, so it's beyond

1 the scope of his testimony, and I move that the
2 question be stricken and my objection be sustained.

3 JUDGE HAYNES: Overruled, but we'll see where you
4 are headed.

5 MS. MOSBY: Okay. Thank you.

6 MS. MOSBY: Q. I'll repeat the question,
7 Mr. Carroll. Are you aware that The District filed
8 a facilities plan amendment with NIPC?

9 A. Yes, I'm aware of one facilities plan
10 amendment I believe was filed. I'm not sure which
11 one, if there's been more than one. I'm aware of
12 when one I believe was prepared in '04, late '04,
13 which I've seen a copy of a document, never used the
14 document itself.

15 JUDGE HILLIARD: When you speak, you talk to each
16 other and it doesn't project up here.

17 MS. MOSBY: Q. Did you get --

18 JUDGE HILLIARD: Yes.

19 MS. MOSBY: -- his response?

20 MS. MOSBY: Q. And are you aware, Mr. Carroll,
21 that NIPC recommended The District's facilities plan
22 amendment for full approval?

1 MR. CASEY: Objection. The witness stated that
2 he saw the cover sheet. He didn't state that he had
3 ultimate knowledge of what NoMo was looking for
4 within the amendment or what was filed in NIPC.

5 MS. MOSBY: Your Honors, because he --

6 JUDGE HILLIARD: Overruled. You can ask the
7 question if you know the answer.

8 THE WITNESS: I'm not -- no, I'm not aware of
9 whether they have or they have not.

10 MS. MOSBY: Q. Mr. Carroll, are you aware that
11 the area Rockwell seeks to serve, as outlined in
12 your Exhibit JPC 1.2 and 1.3, is included in The
13 District's facilities plan amendment?

14 A. No, I'm not aware of that specifically.

15 Q. Are you aware that The District is a
16 designated management agency for Rockwell -- for the
17 area Rockwell seeks to serve?

18 MR. CASEY: Objection. You assume a legal
19 conclusion.

20 MS. MOSBY: Your Honors, that is -- that's not a
21 legal conclusion. That's incorrect. That's a
22 decision that was made by NIPC and the title was

1 given to The District.

2 JUDGE HILLIARD: That's not in evidence. You can
3 ask him a question. If he knows the answer, he can
4 answer the question.

5 MS. MOSBY: Your Honors, that actually is in
6 evidence through our witness' testimony.

7 JUDGE HILLIARD: Which hasn't been admitted yet.

8 MS. MOSBY: But it has been filed in this case
9 and purports to be --

10 JUDGE HILLIARD: You can ask him the question.
11 If he's knows the answer, he can answer it.

12 MS. MOSBY: Q. Do you need me to repeat the
13 question?

14 A. Yes, please. Can you repeat it.

15 Q. Are you aware that The District is a
16 designated management agency for the area that
17 Rockwell seeks to serve?

18 A. No, I'm not aware of that and it's my
19 understanding that that is the matter in question.

20 Q. In your revised testimony, Mr. Carroll,
21 again Page 5, Lines 103 and 104, you state that you
22 have overall responsibility for the operations of

1 Rockwell. Is that a correct statement?

2 A. Yes, that is correct.

3 Q. Have you filed at this point on behalf of
4 Rockwell an application with NIPC to modify the
5 district's FPA?

6 A. No, we have not filed any such document.

7 Q. Have you directed anyone to file on behalf
8 of Rockwell an application with NIPC to modify The
9 District's FPA?

10 A. No, we have not. I have not.

11 Q. Have you filed on behalf of Rockwell an
12 application with NIPC to become the designated
13 management agency for the Rockwell -- for the area
14 that Rockwell seeks to serve?

15 A. No.

16 Q. And you haven't directed anyone to do that
17 either, have you, Mr. Carroll?

18 A. No, I have not.

19 Q. Just a couple more questions.

20 In your surrebuttal testimony, Page 9,
21 Lines 181 through 187 -- I'll give you a moment to
22 grab that.

1 MR. CASEY: Ms. Mosby, what was the cite again?

2 MS. MOSBY: Page 9, Lines 181 through 187.

3 MR. CASEY: Thank you.

4 JUDGE HILLIARD: Do you know what exhibit?

5 MS. MOSBY: It's Exhibit 9.0.

6 THE WITNESS: I have read the cite.

7 MS. MOSBY: Q. Okay. Thank you, sir.

8 Your Honors ready?

9 JUDGE HAYNES: Yes.

10 MS. MOSBY: Q. You state that Rockwell provided

11 The District with a copy of Rockwell's filing. Are

12 you referring to Rockwell's petition for a temporary

13 certificate?

14 A. Could I refer to the exhibit?

15 (A brief pause.)

16 JUDGE HILLIARD: You are asking him about Lines

17 181 and 187 on Page 9?

18 MS. MOSBY: Yes, sir. It's specifically the

19 lines beginning at 183 through 185.

20 JUDGE HILLIARD: Okay.

21 THE WITNESS: And that response was referring to

22 the letter from my attorney, Mr. Casey, to one of

1 the attorneys for Northern Moraine Reclamation
2 District transmitting to him all copies of the
3 petitions that were -- and exhibits that were
4 currently in existence at that time.

5 MS. MOSBY: Q. Okay. And you say --

6 A. I need to refer back to the dates. I
7 believe at that time there was no revised petition.
8 There was only our initial petition. I need to
9 change that.

10 Q. I'm sorry, Mr. Carroll. And that was your
11 petition for a temporary certificate, or the
12 permanent certificate, or both?

13 A. Excuse me. I don't -- I don't know at this
14 time what was included with that.

15 Q. Okay. Was the date your temporary
16 certificate -- the date you filed your temporary
17 certificate was that July 24, 2006?

18 MR. CASEY: Your Honors, while Mr. Carroll's
19 looking, I'm going to state an objection now based
20 on this line of questioning. The point is that
21 NoMo's trying to make -- if the point that NoMo is
22 trying to make is that they didn't receive notice

1 and, therefore, the temporary certificate is somehow
2 deficient, that's been litigated by the Commission.
3 Staff has indicated in their motion to strike such
4 line is a collateral attack on the Commission's
5 previous order.

6 MS. MOSBY: Your Honors, actually the point goes
7 to Mr. Carroll's testimony that The District was
8 served with notice of this position and the point is
9 The District was not, and, in effect, was not for 16
10 days or more after the petition was filed, so I
11 believe The District has a right to correct the
12 record.

13 MR. CASEY: The point is whether or not NoMo's
14 entitled to notice and the Commission ruled they
15 were not.

16 MS. MOSBY: The District objects to that and
17 totally disagrees with Mr. Casey.

18 JUDGE HILLIARD: You can argue that in briefs.
19 Just ask questions of the witness and let the
20 witness answer the questions.

21 MS. MOSBY: Okay.

22 MR. CASEY: Is there a question pending, your

1 Honors, or was my objection sustained?

2 JUDGE HILLIARD: Your objection is noted for the
3 record. The witness can answer the question.

4 MR. CASEY: Could we have the question back?

5 MS. MOSBY: Absolutely.

6 MS. MOSBY: Q. The date that Rockwell filed its
7 petition for temporary certificate was July 24,
8 2006; is that correct?

9 A. Yes, I believe that's correct.

10 Q. And your letter that you attached as JPC, I
11 believe, 9.2 -- Exhibit 9.2 to your surrebuttal
12 testimony, it states that Rockwell was provided a
13 copy of that petition by mail. Is that U.S. Mail?

14 A. I don't know.

15 Q. But, in any case, that copy of that notice
16 was sent on August 11th by way -- at least that's
17 the date of your cover letter, Exhibit 9.2.

18 A. The question is -- would you please indicate
19 what your question is?

20 Q. Absolutely. The date of your cover letter
21 is dated August 11th; is that correct?

22 A. That is, but that is a cover letter from my

1 attorney, Mr. Casey, to their attorney and it's not
2 my cover letter.

3 Q. I understand it's not yours, but it is dated
4 August 11th.

5 A. Yes, that is correct.

6 Q. Thank you.

7 Are you aware that the same date that
8 your petition was filed, July 24th '06, your
9 attorneys did have a conversation about The District
10 possibly intervening?

11 A. No, I'm not aware of that specifically on
12 that date.

13 Q. Okay. It's a part of the discovery that
14 your attorneys submitted; is that correct?

15 JUDGE HILLIARD: Just ask questions, Ma'am.

16 MS. MOSBY: Okay. Nothing further.

17 JUDGE HILLIARD: You don't have any --

18 MS. BUELL: No questions from staff.

19 JUDGE HAYNES: Redirect?

20 MR. CASEY: Can we have one moment?

21 JUDGE HAYNES: Sure.

22 (A brief pause.)

1 MR. CASEY: No redirect.

2 JUDGE HAYNES: Thank you, Mr. Carroll.

3 THE WITNESS: Thank you.

4 JUDGE HAYNES: Mr. Casey, would you like to call
5 your next witness.

6 MR. CASEY: Yes, Honor. And while we're making
7 that transfer, your Honors had allowed certain
8 witnesses to appear or their testimony to be entered
9 by affidavit at least on behalf of Rockwell. Those
10 include Rockwell 3.0R, Rockwell Exhibit 4.0R,
11 Rockwell Exhibit 6.0, Rockwell Exhibit 7.0. I ask
12 those be admitted into the record.

13 JUDGE HAYNES: Could you clarify for the record
14 what those documents are?

15 MR. CASEY: Certainly. The Exhibit 3.0R is the
16 Revised Direct Testimony of David R. Monie. Exhibit
17 4.0R is the Revised Direct Testimony of Michael
18 Albach. Exhibit 6.0 is the Rebuttal Testimony of
19 Michael Albach, and Exhibit 7.0 is Rebuttal
20 Testimony of David Monie.

21 JUDGE HAYNES: And these have been filed on
22 e-docket?

1 MR. CASEY: They have been filed on e-docket and
2 the affidavit then would be submitted today.

3 JUDGE HAYNES: Okay. Is there any objection to
4 admitting this testimony?

5 MS. MOSBY: No objection from The District.

6 MS. BUELL: No objection from staff, your Honors.

7 JUDGE HAYNES: Okay. Then Exhibit 3.0R, 4.0R,
8 6.0, and 7.0, as previously filed on e-docket and
9 affidavits of two witnesses, are admitted into the
10 record.

11 (Whereupon, 3.0R, 4.0R,
12 6.0 and 7.0 were
13 received in evidence.)

14 JUDGE HILLIARD: Court Reporter, just for
15 purposes of recordkeeping here, were Exhibits 1.0
16 and 7.0R, 5.0 and 9.0 admitted?

17 COURT REPORTER: I'm not sure.

18 JUDGE HAYNES: Just note they are, and 5.0 are.

19 Good morning.

20 MS. GALIOTO: Good morning, your Honors. At this
21 time I would to call Jeremy C. Lin.

22 JUDGE HAYNES: Please raise your right hand.

1 (Witness sworn.)

2 Thank you.

3 JEREMY C. LIN,

4 called as a witness herein, having been first duly
5 sworn, was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY

8 MS. GALIOTO:

9 Q. Mr. Lin, would you state your full name and
10 spell your last name for the record.

11 A. My name is Jeremy C. Lin, L-i-n.

12 Q. By whom are you employed and in what
13 capacity?

14 A. I'm employed by Lintech Engineering, 1496
15 Merchant Drive, Algonquin, Illinois, 60102, and I'm
16 managing principal of the company.

17 Q. Mr. Lin, did you submit revised direct
18 testimony, rebuttal testimony, and surrebuttal
19 testimony in this proceeding?

20 A. I did.

21 Q. Was your revised direct testimony marked
22 Rockwell Exhibit 2.0R?

1 A. Correct.

2 Q. And was your revised testimony marked

3 Rockwell Exhibit 8.0?

4 A. Yes.

5 Q. And was your rebuttal or your surrebuttal

6 testimony marked Rockwell Exhibit 10.0?

7 A. Yes.

8 Q. Do you have any changes to any of those

9 three pages of testimony today?

10 A. I have a few changes to my surrebuttal

11 testimony, Rockwell Exhibit 10.0.

12 Q. Can you tell us what the first change is?

13 A. The first change is on Page 3, Line 56.

14 That line the word "second" starting with "second,"

15 I like to strike the next two paragraphs -- the next

16 two sentences and replace that with the following.

17 MS. MOSBY: That was your revised direct

18 testimony?

19 THE WITNESS: It was my surrebuttal testimony.

20 MS. BUELL: So that's Rockwell Exhibit 10.0 and

21 you are on Page 3?

22 THE WITNESS: Page 3, yes.

1 MS. BUELL: Could you repeat the lines, please.

2 THE WITNESS: Yes. Starting with Line 56, the

3 word "second comma" --

4 MS. MOSBY: I'm sorry. Did you guys prepare an
5 errata for that?

6 MS. GALIOTO: He's going to detail the changes
7 right now. We'll be submitting an errata for the
8 record subsequent to the proceeding if that's
9 acceptable.

10 JUDGE HAYNES: Is there a lot of changes?

11 MS. GALIOTO: He has a change to the second and
12 third and then there's just an exhibit number
13 change.

14 JUDGE HAYNES: Go ahead.

15 THE WITNESS: Starting with "second," replace the
16 next two sentences with the following: "The
17 existing facility, in fact, does have 150 days
18 winter storage volume for the permitted 3,210 P.E.
19 capacity based on the first cell and second cell
20 lagoons having reserve volume," then my testimony
21 will continue on Page 59 with third comma, and I
22 would like to strike starting at Line 59 beginning

1 with the letter -- I'm sorry -- Line 60 -- at the
2 end of Line 60 starting with "i-n" striking that
3 sentence and replacing it with the following: "In
4 the event increased capacity is required that
5 necessitates construction, the cost of the
6 construction would reduce the purchase price by an
7 equal amount. Per paragraph 2(e) of the asset
8 purchase agreement, Rockwell's costs to purchase the
9 facility and to expand that facility's capacity may
10 not exceed the maximum purchase price. Any costs in
11 excess thereto would be paid by the seller, Lakemore
12 Building Corporation."

13 And my final revisions appear on Page 5
14 on Line 90, the reference to Exhibit JPC 2.3 should
15 be revised to Exhibit JCL; similarly, in Line 92 --

16 JUDGE HAYNES: 2.3?

17 THE WITNESS: JCL 2.3.

18 Similarly, on Line 92 instead of JPC
19 2.3 should be JCL 2.3.

20 JUDGE HILLIARD: Do you have a written version of
21 your changes?

22 JUDGE HAYNES: A lot of those sentences --

1 MS. GALIOTO: We'll provide that after today's
2 hearing to you.

3 JUDGE HILLIARD: You don't have a copy for the
4 people who will be crossing the witness today?

5 MS. GALIOTO: I do not. We can use --

6 JUDGE HILLIARD: Do you have a copy that he read
7 from that you can make a copy and give it to them?

8 MS. GALIOTO: Yes, we can hand them a handwritten
9 copy.

10 JUDGE HILLIARD: You can make a copy so the
11 witness has a copy. Also, you can use the
12 Commission's copier down the hall.

13 MS. MOSBY: Your Honors, The District is going to
14 object to these substantive changes just on the
15 basis we have not had time to review this
16 information, nor have we had time to have our
17 experts review this information so that we can
18 prepare an effective cross-examination. Giving that
19 to us two minutes before we're suppose to
20 cross-examine this witness is absolutely
21 unacceptable.

22 JUDGE HAYNES: Let's get a copy of it and then

1 have this discussion, because I don't know how
2 substantive the changes are.

3 MS. GALIOTO: Your Honors, if we could take a
4 break to do that.

5 MS. MOSBY: Can we have a break after we receive
6 the copy so we can review the information?

7 JUDGE HAYNES: Yes.

8 MS. BUELL: Your Honors --

9 JUDGE HILLIARD: Yes.

10 MS. BUELL: -- how long a break are we talking?

11 JUDGE HILLIARD: Just enough for to copy and to
12 review it. I would estimate 5 or 10 minutes.

13 MS. BUELL: Okay.

14 (Whereupon, a recess was
15 taken.)

16 Let's go back on the record.

17 Now that everybody has had a copy of
18 the changes, does The District have an objection?

19 MS. MOSBY: Your Honors, The District maintains
20 its objection again that Rockwell's submitted
21 substantive changes to surrebuttal testimony the day
22 of the hearing and not allowing us to adequately

1 confer with our experts to either verify or to even
2 discuss this information and provide adequate
3 cross-examination.

4 MS. GALIOTO: Your Honors, if I may respond --

5 JUDGE HAYNES: Yes.

6 MS. GALIOTO: -- initially, I like to point out
7 that the portion of the surrebuttal testimony that
8 is in question was responding to allegations made by
9 Northern Moraine witness Mr. Trotter out of turn
10 himself. It was testimony that's subject to our
11 motion to strike for the fact that it constituted
12 improper additional direct testimony within his
13 rebuttal testimony, and by him raising it, these
14 issues at such a late date, Rockwell itself was
15 prejudiced in its ability to turn around a response.

16 We have a single week preparing for
17 hearing, cross examination, motions to compel,
18 motions to strike that we're also in the process of
19 and these are minor inadvertent errors that
20 resulted.

21 It is routine at Commission proceedings
22 for any corrections to testimony to be made by the

1 witness while on the stand at the evidentiary
2 hearing, and the reason that is the case is because
3 the testimony itself is not submitted into the
4 evidentiary record until during the time of the
5 evidentiary hearing, so this is not testimony that
6 has been previously submitted into the evidentiary
7 record and that is being subsequently changed. It's
8 being offered for the first time here today.

9 The changes that we have identified are
10 intended for the purpose of conforming the testimony
11 to the truth of the facts in this case and it is the
12 Commission's purpose in these proceedings to conform
13 the evidence to the truth of the facts, and it would
14 be a disservice to the Commission, as well as the
15 parties, to overlook a change in testimony that is
16 intended to do so.

17 And, finally, I would point out that
18 this is a mere eight lines of testimony that we're
19 talking about in a fairly voluminous record of this
20 case and that the second of the two changes is quite
21 honestly simply a clarification of the section of
22 the asset purchase agreements that set forth the

1 fact that Rockwell would not incur these additional
2 costs, which was the substance of the original
3 testimony, and all it is is conform to the actual
4 correct citation to the asset purchase agreement,
5 and the asset purchase agreement has been in the
6 record since the beginning of this case, so those
7 provisions are not new to anybody and they have been
8 available to Northern Moraine's counsel, as well as
9 its witness, for many months at this point.

10 MS. MOSBY: In rebuttal, whether it's eight lines
11 or one line, if it's a substantive change, The
12 District is disadvantaged by not having the
13 opportunity to prepare a response.

14 Second of all, Ms. Galioto stated
15 Mr. Lin's testifying as to what the asset purchase
16 agreement allows. That is legal opinion. In all of
17 their motions they're objecting to our experts
18 opinion as legal opinions. We can't do it; they
19 can't either.

20 Third of all, again, this is a
21 substantive change. They were given a week she
22 says. We're given ten minutes. As such, again, I

1 state our objection.

2 JUDGE HAYNES: Does staff have --

3 MS. BUELL: Your Honors, staff has reviewed these
4 changes that Mr. Lin is making to his surrebuttal
5 testimony. Staff believes they clarify The
6 District's testimony and, as such, has no objection
7 to the amendment.

8 JUDGE HAYNES: With respect to the second change,
9 talking about the asset purchase agreement, it's not
10 so substantive that The District could not
11 adequately cross-examine on it today, and with
12 respect to your objection that it's a legal
13 conclusion, that's overruled as well. With respect
14 to the first change, the objection's also overruled.

15 MS. GALIOTO: Q. Mr. Lin, subject to those
16 changes, if I were to ask you the questions
17 contained within your revised direct, rebuttal, and
18 surrebuttal testimony today, would your answers be
19 the same.

20 A. Yes.

21 MS. GALIOTO: Your Honors, I would move for
22 admission into the record of Rockwell

1 Exhibits 2.0R, I believe it's 8.0, and 10.0, and I
2 would submit the witness for cross-examination.

3 JUDGE HAYNES: Is there any objection to entering
4 these exhibits into the record?

5 MS. BUELL: No objection from staff, your Honors.

6 MS. MOSBY: No objection from The District.

7 JUDGE HAYNES: Okay. I do ask that Rockwell
8 Exhibit 10.0 be filed today with the changes.

9 MS. GALIOTO: We'll file an errata subsequent to
10 the hearing today.

11 JUDGE HAYNES: Then 2.0R, 8.0, and 10.0 are
12 admitted into the record.

13 (Whereupon, Exhibit Nos.
14 2.0R, 8.0, & 10.0 were
15 previously marked for
16 identification and
17 received in evidence.)

18 JUDGE HILLIARD: Cross?

19 MS. BUELL: Staff has no cross for this witness,
20 your Honors.

21 MS. MOSBY: The District has a few questions.

22

1 CROSS EXAMINATION

2 BY

3 MS. MOSBY:

4 Q. Good morning, Mr. Lin.

5 A. Good morning.

6 Q. A few questions for you.

7 I'm going to refer you to your rebuttal
8 testimony, Page 1, starting at Line 21.

9 A. Okay.

10 Q. Starting at Line 21, Mr. Lin, you state that
11 the Illinois EPA has the duty to administer all
12 environmental permitting and certifications systems
13 in Illinois. You see that line, Mr. Lin?

14 A. Yes.

15 Q. Mr. Lin, was that testimony taken directly
16 from Title 10 of the Environmental Protection Act
17 cited at 415 ILCS 5/4G?

18 MS. GALIOTO: This calls for -- this calls
19 for -- I'm sorry. I'll withdraw.

20 THE WITNESS: I'm not familiar with that exhibit
21 section in the document they're referring to.

22 MS. MOSBY: Q. The document -- okay. But you

1 did write this testimony, correct?

2 A. Correct. That is my belief that the EPA
3 administers all the permitting for wastewater
4 systems and is the final authority on any facility
5 planning area boundaries.

6 Q. Is that based on any law that you know of?

7 A. That's based on my experience in permitting
8 wastewater treatment plants and amending facilities
9 planning area boundaries for clients.

10 Q. Have you reviewed the Environmental
11 Protection Act, Mr. Lin?

12 A. Not in detail. That is just my experience
13 in talking with IEPA. I'm familiar that with
14 facility planning area amendments in the six county
15 area go to NIPC and that IEPA makes the final
16 decision on it.

17 Q. Okay. And in your professional experience,
18 have you come across the knowledge to understand
19 that the Illinois EPA has the power also to delegate
20 -- they have delegation duties and they delegate to
21 other agencies, such as NIPC?

22 A. I'm not -- let me rephrase. I believe that

1 IEPA can delegate the review process and take
2 comments from agencies like NIPC, but I have a
3 belief that IEPA makes the final decision. They
4 just take recommendations from other facilities --
5 from other organizations.

6 Q. And you did mention NIPC, so you are
7 familiar with that agency?

8 A. I am, yes.

9 JUDGE HILLIARD: What is that?

10 MS. MOSBY: That's the Northeastern Illinois
11 Planning Commission.

12 JUDGE HILLIARD: Okay.

13 MS. MOSBY: Q. Are you aware that the Illinois
14 EPA has designated NIPC as a water quality planning
15 agency for the six county Chicago metropolitan
16 region?

17 A. Yes, I am.

18 Q. And are you aware that that region includes
19 the area Rockwell seeks to serve?

20 A. I am.

21 Q. And are you also aware that NIPC is
22 responsible for reviewing wastewater permits?

1 A. I don't agree with that question. They are
2 -- it's my belief that NIPC reviews applications for
3 amendments. They do not issue any permits. IEPA
4 issues the actual permits.

5 Q. Okay. I'm going to refer to your
6 surrebuttal testimony now, Mr. Lin.

7 JUDGE HILLIARD: Is that 10.0?

8 MS. MOSBY: That is --

9 MS. GALIOTO: That's correct, your Honor.

10 MS. MOSBY: That's correct.

11 MS. MOSBY: Q. Page 5, starting at Line 92.

12 A. Okay.

13 Q. You discuss or you state there's evidence
14 that "clay liner work" was performed subsequent to
15 1999.

16 A. Correct.

17 Q. Isn't it true that the Illinois EPA requires
18 all treatment storage cells have a liner, clay or
19 otherwise?

20 MS. GALIOTO: Objection; calls for legal
21 conclusion. That's beyond the scope of the witness'
22 testimony as well.

1 MS. MOSBY: Q. In your professional opinion,
2 Mr. Lin, are you aware -- would you agree that all
3 treatment storage cells are required to have a
4 liner, clay or otherwise?

5 A. Yes, in my professional opinion.

6 Q. In your professional experience, would you
7 agree that if there is no liner there's a potential
8 for groundwater contamination?

9 A. I cannot answer that question due to the
10 fact not knowing the actual soil conditions in this
11 case if there were no clay liner.

12 Q. Okay. In your professional opinion,
13 Mr. Lin, would you recommend to continue use of a
14 treatment storage cell if a liner were missing?

15 A. I would recommend a treatment -- some sort
16 of clay liner or synthetic liner be installed for
17 any treatment with --

18 Q. But not continued use without such
19 installation?

20 A. Correct.

21 Q. One additional question, Mr. Lin, and then
22 we're all done. I just have one follow-up question

1 on your revised testimony from 10.0 that you
2 submitted today.

3 Your testimony doesn't cover whether
4 the storage cells of the lagoons have the ability to
5 fluctuate the water levels between them, the cells
6 in the lagoon, does it?

7 A. Can you restate the question. I don't
8 understand.

9 Q. Sure. Absolutely. Your testimony does not
10 cover whether or not there's an ability to fluctuate
11 the water levels between the cells and the lagoon?

12 A. My testimony does not state anything to that
13 effect, does not cover that.

14 MS. MOSBY: Okay. We're all done. That's it.

15 JUDGE HAYNES: Any redirect?

16 MS. GALIOTO: Just give me one second.

17 (A brief pause.)

18 We have no redirect, your Honors.

19 JUDGE HILLIARD: Thank you.

20 JUDGE HAYNES: Thank you, Mr. Lin.

21 JUDGE HAYNES: Okay. Would staff like to call
22 their first witness?

1 MS. BUELL: Yes. Thank you, your Honors. Staff
2 would like to call Mary H. Everson to the stand.

3 JUDGE HAYNES: Good morning, Ms. Everson,

4 MS. EVERSON: Good morning.

5 JUDGE HAYNES: Please raise your right hand.

6 (Witness sworn.)

7 Thank you.

8 MARY H. EVERSON,

9 called as a witness herein, having been first duly
10 sworn, was examined and testified as follows:

11 DIRECT EXAMINATION

12 BY

13 MS. BUELL:

14 Q. Good morning, Ms. Everson. Would you please
15 state your full name and spell your last name for
16 the record.

17 A. Mary H. Everson, E-v-e-r-s-o-n.

18 Q. Ms. Everson, by whom are you employed?

19 A. The Illinois Commerce Commission.

20 Q. And what is your position at the Illinois
21 Commerce Commission?

22 A. I'm an accountant in the --

1 Q. I'm sorry, Mary. Could you please repeat
2 your answer to the last question?

3 A. I'm an accountant in the Accounting
4 Department of the Financial Analysis Division.

5 Q. Thank you.

6 And, Ms. Everson, have you prepared
7 written testimony for purposes of this proceeding?

8 A. Yes, I have.

9 Q. Do you have before you a document, which has
10 been marked for identification as ICC Staff Exhibit
11 5.0, which consist of a cover page, 15 pages of
12 narrative testimony, Schedule 5.1, and a
13 verification and it's titled "Direct Testimony of
14 Mary H. Everson?"

15 A. Yes.

16 Q. And is that a true and correct copy of your
17 direct testimony that you have prepared for this
18 proceeding?

19 A. Yes.

20 Q. Do you also have before you a document,
21 which has been marked for identification as ICC
22 Staff Exhibit 9.0, which consist of a cover page, 9

1 pages of narrative testimony, and a verification,
2 and is titled "Rebuttal Testimony of Mary H.
3 Everson?"

4 A. Yes.

5 Q. And is this also a true and correct copy of
6 the rebuttal testimony that you have prepared for
7 this proceeding?

8 A. Yes.

9 Q. Do you have any corrections that need to be
10 made to either your prepared direct or rebuttal
11 testimony?

12 A. No, I do not.

13 Q. And is this information contained in ICC
14 Staff Exhibits 5.0 and 9.0 true and correct to the
15 best of your knowledge?

16 A. Yes.

17 Q. And if I were to ask you the same questions
18 today, would the answers contained in your prepared
19 testimony be the same?

20 A. Yes.

21 MS. BUELL: Your Honors, at this time I would ask
22 for admission into evidence of Ms. Everson's

1 prepared direct testimony marked as ICC Staff
2 Exhibit 5.0, including the attached Schedule 5.1,
3 and Ms. Everson's prepared rebuttal testimony marked
4 as ICC Staff Exhibit 9.0, and I note for the record
5 that these are the same documents that were
6 originally filed via the Commission's e-docket
7 system on April 20th and May 18, 2007 respectively.

8 JUDGE HAYNES: Are there any objections?

9 MR. CASEY: No objection.

10 MS. MOSBY: No objection from The District.

11 JUDGE HAYNES: Staff Exhibits 5.0 with attachment
12 5.1 and Staff Exhibit 9.0 are admitted into the
13 record.

14 (Whereupon, Staff Exhibit
15 Nos. 5.0, 5.1 & 9.0 were
16 previously marked for
17 identification and
18 received in evidence.)

19 MS. BUELL: Thank you, your Honors. I tender
20 Ms. Everson for cross-examination.

21 JUDGE HAYNES: Okay. Who has cross?

22 MR. CASEY: I do.

1 CROSS EXAMINATION

2 BY

3 MR. CASEY:

4 Q. Ms. Everson, Phil Casey on behalf of
5 Rockwell.

6 A. Good morning.

7 Q. Good morning.

8 Directing your attention to your
9 Exhibit 9.0, Lines 102 to 103 --

10 A. I have them.

11 Q. Okay -- in that question and answer you
12 indicate that you could not recommend the Commission
13 approve Rockwell's ASA until it's formally included
14 in the proceedings; is that correct?

15 A. At that time, that's correct, yes.

16 Q. To your knowledge, has Rockwell formally
17 submitted a revised ASA that address the concerns
18 that you had and it is now formally part of this
19 proceeding?

20 A. I reviewed the affiliate service agreement
21 that was attached to the surrebuttal testimony of
22 John Carroll, and it was labeled "Exhibit JPC 9.1,"

1 and that revised affiliate service agreement
2 incorporates all of my suggested changes; therefore,
3 I would recommend the Commission approve that
4 revised affiliate service agreement.

5 MR. CASEY: Nothing further.

6 JUDGE HAYNES: Okay. Does The District have
7 cross?

8 MS. MOSBY: The District does not have cross for
9 this witness.

10 JUDGE HAYNES: Okay. Thank you, Ms. Everson.

11 JUDGE HILLIARD: Redirect.

12 MS. BUELL: Staff has no redirect, your Honor.

13 MR. CASEY: Thank you, Ms. Everson.

14 MS. BUELL: Thank you, Mary.

15 THE WITNESS: Thanks.

16 JUDGE HAYNES: Would you like to call your next
17 witness.

18 MR. BUELL: Yes. Thank you, your Honor. Staff
19 calls Thomas Q. Smith to the stand.

20 Good morning, Mr. Smith. Would you
21 please state your full name and spell your last name
22 for the record.

1 JUDGE HAYNES: I'll swear you in.

2 MS. BUELL: Sorry.

3 JUDGE HAYNES: Good morning.

4 (Witness sworn.)

5 THOMAS Q. SMITH,

6 called as a witness herein, having been first duly

7 sworn, was examined and testified as follows:

8 DIRECT EXAMINATION

9 BY

10 MS. BUELL:

11 Q. Okay. Mr. Smith, now that you are sworn in,
12 would you please state your name and spell your last
13 name for the record.

14 A. Thomas Q. Smith, S-m-i-t-h.

15 Q. And, Mr. Smith, by whom are you employed?

16 A. The water department of the Illinois
17 Commerce Commission.

18 Q. And have you prepared written testimony for
19 purposes of this proceeding?

20 A. Yes, I have.

21 Q. Do you have before you a document, which has
22 been marked for identification as ICC Staff Exhibit

1 2.0, which consists of a cover page, 18 pages of
2 narrative testimony, Attachments 1, 2, and 3, and a
3 verification titled "Direct Testimony of Thomas Q.
4 Smith?"

5 A. Yes, I have that.

6 Q. Is this a true and correct copy of the
7 direct testimony that you prepared for this
8 proceeding?

9 A. Yes, it is.

10 Q. Do you also have before you a document,
11 which has been marked for identification as ICC
12 Staff Exhibit 7.0, which consists of a cover page, 7
13 pages of narrative testimony, Attachments 7.1, 7.2,
14 and 7.3, and a verification titled "Rebuttal
15 Testimony of Thomas Q. Smith?."

16 A. Yes, I have that.

17 Q. And is this a true and correct copy of the
18 rebuttal testimony that you have prepared for this
19 proceeding?

20 A. Yes, it is.

21 Q. And do you have any corrections to make to
22 either your prepared direct or prepared rebuttal

1 testimony?

2 A. No.

3 Q. Is the information contained in ICC Staff
4 Exhibit 2.0 and 7.0 true and correct to the best of
5 your knowledge?

6 A. Yes.

7 Q. And if I were to ask you these same
8 questions today, would your answers be the same?

9 A. Yes.

10 MS. BUELL: Your Honors, at this time I would ask
11 for admission into evidence Mr. Smith's prepared
12 direct testimony marked as ICC Staff Exhibit 2.0,
13 including Attachments 1, 2, and 3, and Mr. Smith's
14 prepared rebuttal testimony marked as ICC Staff
15 Exhibit 7.0, and I note for the record that these
16 are the same documents that were filed originally
17 via the Commission's e-docket system on April 20th
18 and May 18, 2007 respectively.

19 JUDGE HAYNES: Any objections?

20 MR. CASEY: No objections, your Honors.

21 MS. RICH: No objection.

22 JUDGE HAYNES: Staff Exhibit 2.0 with Attachments

1 1, 2, and 3, and 7.0 with attachment 7.1, 7.2, and
2 7.3 are admitted into the record.

3 (Whereupon, Staff Exhibit
4 Nos. 2.0, 7.0 thru 7.3
5 were previously marked
6 for identification and
7 received in evidence.)

8 Any cross-examination?

9 MR. CASEY: Your Honors, we indicated to staff
10 that we had -- Rockwell has no cross-examination for
11 Mr. Smith.

12 JUDGE HAYNES: The District?

13 MS. RICH: We have just a brief cross examination
14 of Mr. Smith.

15 CROSS EXAMINATION

16 BY

17 MS. RICH:

18 Q. Mr. Smith, my name is Nancy Rich. Since you
19 certainly were here before, you probably saw that I
20 represent the Northern Moraine Wastewater
21 Reclamation District. I'll just refer to them as
22 "The District" as we go through if that's okay with

1 you.

2 A. That's fine.

3 Q. I would like to ask you some questions about
4 the amended petition for a Certificate of Public
5 Convenience and Necessity filed on behalf of
6 Rockwell Utilities; is that okay?

7 MS. BUELL: Depending upon the questions, that's
8 not a document that Mr. Smith has sponsored.

9 MS. RICH: We're not asking you to reserve or to
10 give up any of your objections, Ms. Buell.

11 MS. RICH: Q. To make it earlier, I'll just
12 refer to Rockwell's amended petition as -- the
13 petition as Rockwell; is that okay?

14 A. That's fine.

15 Q. Okay. But you have submitted testimony
16 regarding Rockwell's petition and its merits,
17 correct?

18 A. I presented testimony in response to
19 Rockwell's testimony, and I have presented
20 testimony addressing The District's testimony to the
21 extent that the petition or information in the
22 petition is addressed by the various parties, and,

1 yes, I guess I have addressed the petition.

2 Q. Okay. As I understand your testimony, you
3 hold a position as an economic analyst in the water
4 department and that's in the Financial Analysis
5 Division of the Commerce Commission?

6 A. That's correct, yes.

7 Q. Okay. And, as I also understand your
8 testimony, your education and training as an
9 accountant, correct?

10 A. That is correct.

11 Q. You have a Bachelor's Degree, in fact, in
12 accounting?

13 A. That's correct, too.

14 Q. And your work experience consist of seven
15 years in accounting posts?

16 A. Many more than seven. I was originally
17 employed in the Michigan Public Service Commission
18 in 1974 and have been employed there and in other
19 utility-type accounting, and/or auditing positions,
20 until three years ago.

21 Q. Okay. So then we're talking more like 30
22 years of experience?

1 A. Yes.

2 Q. And that's all in accounting, correct?

3 A. The term "experience" could be -- I mean,
4 generally that's in accounting in, yes.

5 Q. Okay. But, for example, you are not an
6 engineer?

7 A. I do not have a degree in engineering,
8 correct, or any type of licensing in engineering,
9 correct.

10 Q. And you never worked as an engineer?

11 A. Well, I don't know. I mean, I have designed
12 rates, which is generally considered an engineering
13 function, so, in that sense, I have.

14 Q. But you have no degree in engineering though
15 or anything like that?

16 A. No, I think I previously indicated I do not
17 have a degree in engineering, that's correct.

18 Q. Okay. So your work in rates is then based
19 upon experience, correct?

20 A. Well, it's based on my experience and my
21 education, yes.

22 Q. Okay. So when you say in your testimony

1 that you inspected the operating system and the
2 service area proposed to be served by Rockwell water
3 and sewer system, you did that based upon your
4 general training and experience and not as an
5 engineer, correct?

6 A. I did it base on my knowledge of public
7 utilities, my knowledge of 83 Illinois
8 Administrative Code 600. That was the basis of my
9 inspection.

10 Q. But you didn't go out there and conduct any
11 physical testing of the operating systems that
12 Rockwell proposes to serve the area with, did you?

13 A. Testing is a pretty broad term. Can you
14 narrow that down?

15 Q. Physical testing.

16 A. You are asking me if I turned any valves? I
17 mean, I inspected the physical plant. I didn't turn
18 any valves that I remember.

19 Q. So the actual valve turning that you are
20 talking about, that typical inspection that would be
21 done by an engineer normally, wouldn't it?

22 A. No. Our department -- I mean, first of all,

1 this wasn't -- this was an inspection for compliance
2 with -- with the rules of the Commission and for --
3 and it was based on my need to inspect as a result
4 of the Public Utilities Act 8-406. It wasn't -- I
5 mean, the department does not have many people who
6 are not engineers. We do inspections all the time,
7 so when you say turning valves and whatnot, I don't
8 know that that's even relevant to what I did.

9 Q. Okay. So you never reviewed any reports of
10 the physical testing or even knew, for example, if
11 there were any?

12 A. I'm having difficulty in terms of where you
13 are going. I mean, I don't want to start answering
14 speculative-type questions that have nothing to do
15 with what I'm testifying to and I'm not sure --

16 Q. Right.

17 A. -- what you are looking for.

18 Q. And I apologize. I want to be clear as
19 well. You didn't review any reports that pertain to
20 what we call here valve turning?

21 A. Well, I mean, I reviewed reports that were
22 available. Now this company has not -- Lakemoor,

1 who owned the utility at that time, was not under
2 the jurisdiction of the Commission and they were not
3 regulated, so reports that weren't -- would normally
4 be available were not available.

5 Now had it been under the
6 regulation of the Commission, what I would have
7 reviewed might well have or would have been
8 difficult than in this particular circumstance, but
9 I went out there. I looked at pressure gauges. I
10 looked at the pumps. I looked at, you know, the
11 tanks -- the storage tanks. I reviewed what records
12 were available.

13 Q. Okay. And the records that were available
14 those were provided by Rockwell, correct?

15 A. Rockwell provided me access to the -- to the
16 facilities. Now who actually provided the records
17 in terms of owning the records, I mean, I would
18 review it, that whoever owns the records ultimately
19 provided the records, I don't know who that was. I
20 presumed Lakemoor because they owned the system at
21 that time.

22 Q. I'm going to turn to a different topic,

1 referring to your direct testimony, Page 9, Lines
2 200 to 202. Just tell me when you are ready and
3 when you are there.

4 A. I'm ready.

5 Q. You say that you have seen no convincing
6 evidence that The District currently processes the
7 assets that are required to provide immediate sewer
8 service in the service area; is that correct?

9 A. Yes, that's what my testimony state.

10 Q. You never inspected Northern Moraine
11 District's operating system or their facilities, did
12 you?

13 A. My understanding that Northern Moraine has
14 no operating system within the area that's at issue
15 in the certificate, so, yes, I did not inspect any
16 Northern Moraine-owned assets in that sense. I did
17 familiarize myself with the location of Northern
18 Moraine's collection mains as presented -- or as
19 that information was given to me by Rockwell
20 personnel.

21 Q. And you didn't interview anybody from The
22 District regarding The District's capacity?

1 A. I sent out several data requests addressing
2 that question. In person, I don't believe I spoke
3 with anybody.

4 Q. Okay. You never asked for or reviewed any
5 financial information regarding The District's
6 ability to provide service, did you?

7 A. Well, again, I asked data requests -- I sent
8 out data requests requesting financial information,
9 cost of providing service, et cetera, yes.

10 Q. And, as part of that, did you review The
11 District's 2004 facilities plan amendment?

12 A. I reviewed it briefly, yes.

13 Q. Just one moment, please.

14 (A brief pause.)

15 Okay. Just a couple more questions,
16 Mr. Smith. I just want to cut to the chase here, so
17 when you do your investigations, the law that you
18 are focused on then is the Public Utilities Act?

19 A. Yes, that's correct.

20 Q. So you are not out there looking at another
21 law. You are just in this particular case looking
22 at 8-406?

1 A. Primarily for 406. There may be other parts
2 of the Public Utilities Act that impact it but
3 nothing -- nothing beyond the Public Utilities Act.

4 Q. Okay. So then it's not part of your job to
5 get into the issue of say, for example, references
6 in the facilities plan amendment submitted by The
7 District and approved by the Northeastern Planning
8 Commission, or NIPC as you heard it referred to
9 today. That's just not part of your analysis,
10 correct?

11 A. Can you be more specific? It's a pretty
12 broad question.

13 Q. Okay. So, in other words, let me see if I
14 can rephrase it to make it a little more clear.

15 You never reviewed the 2004 District
16 facilities plan amendment for purposes of compliance
17 with any law other than the Public Utilities Act,
18 correct?

19 A. Correct, not for purposes of compliance with
20 any other law to the extent that it may have some
21 impact on the Public Utilities Act. I mean, that's
22 something -- that's what I would have been looking

1 for in my review.

2 Q. And in this particular review you didn't
3 find that any other law had any impact on the Public
4 Utilities Act?

5 A. That's correct.

6 Q. Just one more topic, and I'm going to ask
7 you, you know, again, based on all these years of
8 experience that I have heard you testify here about
9 today, about your experience and your professional
10 opinion, in all these years of working in rates and
11 utilities, you agree that a company that
12 consistently operates with its expenses exceeding
13 its revenue is going to be sustainable over the long
14 term?

15 MS. BUELL: Objection, your Honor. That's beyond
16 the scope of Mr. Smith's testimony.

17 MS. RICH: The response to that is it goes to
18 least cost. Something not sustainable, they're
19 clearly not least cost.

20 MS. BUELL: You want to ask Mr. Smith questions
21 about his least cost analysis, I would say that's
22 within his testimony but anything else would be

1 beyond the scope.

2 JUDGE HILLIARD: Overruled.

3 THE WITNESS: Could I have the question read
4 back, please.

5 MS. RICH: Certainly.

6 MS. RICH: Q. In your professional opinion,
7 would you agree that a company that's consistently
8 operating with its expenses exceeding its revenues
9 is not going to be sustainable over the long term?

10 A. I always have trouble with questions that
11 are hypothetical in nature. It becomes very
12 difficult to provide a nonspeculative answer,
13 because the whole question is speculative.

14 I guess I would agree that if an entity
15 without regard to any other entities it may be
16 related to that without regard to somebody who might
17 not be willing to subsidize.

18 There are many, many, many assumptions
19 that have to be made, but, as a general proposition,
20 if expenses exceed revenues, the utility will or a
21 company or an enterprise will eventually go
22 bankrupt.

1 Q. There's been some testimony in this
2 proceeding about depreciation and I need your help
3 on a question here. Is it correct that for sewage
4 treatment plants a 50-year depreciation period
5 provides an adequate way to represent the ultimate
6 replacement cost of a system, that is repairs and
7 then ultimately replacement?

8 MS. BUELL: Objection, your Honors. That's
9 clearly beyond the scope of Mr. Smith's testimony.
10 He does not mention depreciation, nor has he
11 reviewed depreciation at all in this proceeding
12 ultimately.

13 JUDGE HILLIARD: Sustained.

14 MS. RICH: I have no further questions for
15 Mr. Smith at this time.

16 JUDGE HAYNES: Redirect?

17 MS. BUELL: May I have five minutes, please?

18 JUDGE HAYNES: Sure.

19 MS. BUELL: Thank you.

20 (A brief pause.)

21 Your Honors, staff has no redirect for
22 this witness, Judge.

1 JUDGE HAYNES: Okay. Thank you.

2 JUDGE HILLIARD: We'll take a lunch break. Other
3 witnesses?

4 MS. BUELL: I have testimony to move into the
5 record via affidavit if you want to do that now.

6 JUDGE HILLIARD: That's fine.

7 MS. BUELL: Staff moves for admission to the
8 evidentiary record ICC Staff Exhibit 4.0 titled
9 "Direct Testimony of Mike Luth" and ICC Staff
10 Exhibit 1.0, which is the affidavit of Mike Luth.

11 JUDGE HAYNES: That's L-u-t-h?

12 MS. BUELL: L-u-t-h, yes. Thank you.

13 Staff further moves into the
14 evidentiary record ICC Staff Exhibit 3.0, which is
15 titled "Direct Testimony of Janis Freetly." That's
16 J-a-n-i-s F-r-e-e-t-l-y.

17 Staff further moves ICC Staff Exhibit
18 8.0, which is titled "Rebuttal Testimony of Janis
19 Freetly," and also ICC Staff Exhibit 10.0, which is
20 Ms. Freetly's affidavit.

21 And, finally, staff moves into the
22 evidentiary record ICC Staff Exhibit 6.0 titled

1 "Direct Testimony of William R. Johnson," and
2 Mr. Johnson's affidavit marked for identification as
3 Staff Exhibit 12.0. All of these documents have
4 previously been filed via on the Commission's
5 e-docket system.

6 JUDGE HAYNES: Any objections?

7 MR. CASEY: No objections.

8 MS. RICH: No objections.

9 JUDGE HAYNES: Staff Exhibit 4.0, 1.0, 3.0, 8.0,
10 10.0, 6.0, and 12.0, are admitted into the record.

11 (Whereupon, Staff Exhibit
12 Nos. 4.0, 1.0, 3.0,
13 8.0, 10.0, 6.0, and 12.0
14 were previously marked
15 for identification and
16 received in evidence.)

17 MS. BUELL: Staff has nothing further,
18 your Honors.

19 MS. MOSBY: Your Honors, before we break for
20 lunch, previously staff and Rockwell stated that
21 they could possibly have no questions for our
22 witnesses.

1 Can I ask at this time if we'll even
2 need to call The District witnesses, and, if so,
3 which ones?

4 MS. BUELL: Staff needs to discuss that over the
5 lunch break, your Honors.

6 JUDGE HILLIARD: Okay.

7 JUDGE HAYNES: Okay.

8 JUDGE HILLIARD: In the afternoon we are going to
9 rearrange the duck chairs here. We would like staff
10 and Rockwell to be on the same side, whatever side
11 that is, so if there is any cross-examination,
12 they'll be basically facing each other instead of
13 talking to each other.

14 How long do you want to take for lunch?

15 JUDGE HILLIARD: An hour.

16 MS. RICH: That's fine.

17 JUDGE HILLIARD: 1 o'clock back here. See you
18 then.

19 (Whereupon, a luncheon
20 break was taken.)

21

22

1 (Whereupon, the
2 proceedings resumed as
3 follows:)
4 We'll go back on the record then.
5 JUDGE HAYNES: The District likes to call Ken
6 Michaels.
7 MS. MOSBY: Sure.
8 JUDGE HILLIARD: Everybody else is done?
9 MR. CASEY: Correct.
10 MS. BUELL: Correct.
11 MS. MOSBY: The District calls Mr. Ken Michaels.
12 JUDGE HAYNES: Good afternoon, Mr. Michaels.
13 Please raise your right hand.
14 (Witness sworn.)
15 Thank you.
16 KEN MICHAELS,
17 called as a witness herein, havng been first duly
18 sworn, was examined and testified as follows:
19 DIRECT EXAMINATION
20 BY
21 MS. MOSBY:
22 Q. Mr. Michaels, please state your full name

1 for the record and please spell your last name.

2 A. Kenneth A. Michaels, Jr. Michaels is

3 M-i-c-h-a-e-l-s.

4 Q. And what is your occupation, Mr. Michaels?

5 A. I'm an attorney.

6 Q. And what is your profession with The

7 District?

8 A. I have been -- I was appointed trustee

9 initially in 1994, as I recall, and I have served as

10 trustee continuously since. I am presently the

11 president of The District.

12 Q. What is your business address?

13 A. 53 West Jackson Boulevard, Suite 1115,

14 Chicago, Illinois, 60604.

15 Q. And in this proceeding you submitted direct

16 testimony marked as MMWRD Exhibit 1.0 and you also

17 submitted rebuttal testimony marked as MMWRD 6.0; is

18 that correct?

19 A. That is correct.

20 Q. Do you have any changes today to that

21 testimony?

22 A. No, I do not.

1 Q. Is the information contained in Exhibit
2 MMWRD 1.0 true and correct to the best of your
3 knowledge?

4 A. Yes, it is.

5 Q. If I asked you questions that are in that
6 document today, would the answers be the same as
7 they are in MMWRD 1.0?

8 A. Yes, they would.

9 Q. Is the information contained in Exhibit
10 MMWRD 6.0 true and correct to the best of your
11 knowledge?

12 A. Yes, it is.

13 Q. And if I ask you the questions that are
14 contained in MMWRD 6.0 today, would your answers be
15 the same as they are in that document?

16 A. Yes.

17 MS. MOSBY: The District ask for admission of
18 direct testimony MMWRD 1.0 and rebuttal testimony
19 MMWRD 6.0 for admission and tender the witness for
20 cross.

21 JUDGE HAYNES: Objections?

22 MR. CASEY: No objections other than those that

1 were previously made with respect to the motion to
2 strike.

3 MS. BUELL: That holds true for staff, too, your
4 Honors.

5 JUDGE HAYNES: Okay. These Exhibits 1.0 and 6.0
6 are admitted pending our decision on a motion to
7 strike.

8 (Whereupon, MMWRD Exhibit
9 Nos. 1.0 and 6.0 were
10 previously marked for
11 identification and
12 received in evidence.)

13 MS. MOSBY: Thank you.

14 JUDGE HAYNES: Cross-examination, Mr. Casey?

15 MR. CASEY: I have nothing.

16 JUDGE HAYNES: You have nothing?

17 MS. BUELL: Your Honors, staff has no
18 cross-examination for this witness.

19 JUDGE HILLIARD: Okay.

20 JUDGE HAYNES: Okay.

21 JUDGE HILLIARD: Thank you.

22 THE WITNESS: Thank you very much.

1 MS. MOSBY: The District calls Mr. Scott Trotter
2 by phone.

3 JUDGE HAYNES: Mr. Trotter --

4 MS. MOSBY: Mr. Roach, are you on?

5 MR. ROACH: Yes, I am.

6 JUDGE HAYNES: Well --

7 MS. MOSBY: We'll go onto Mr. Roach until we can
8 get started.

9 JUDGE HAYNES: Okay. Mr. Roach?

10 MR. ROACH: Yes.

11 JUDGE HAYNES: Please raise your right hand.

12 (Witness sworn.)

13 Thank you.

14 GEORGE OWEN ROACH,
15 called as a witness herein, having been first duly
16 sworn, was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY

19 MS. MOSBY:

20 Q. Mr. Roach, this is Monica. How are you.

21 A. Good.

22 Q. Please state your full name, spell your last

1 name for the record.

2 A. George Owen Roach, R-o-a-c-h.

3 Q. Mr. Roach, what is your occupation?

4 A. I'm a certified public accountant.

5 Q. And what is your business address?

6 A. 44 North Walkup Avenue, Crystal Lake,

7 Illinois, 60140.

8 Q. Spell that street name for the record,

9 Mr. Roach.

10 A. W-a-l-k-u-p.

11 Q. And, Mr. Roach, what's the name of that

12 business?

13 A. Roach and Associates.

14 Q. Mr. Roach, in this proceeding you submitted

15 rebuttal testimony MMWRD 5.0; is that correct?

16 A. That's correct.

17 Q. Do you have any changes to that testimony

18 today?

19 A. No, I do not.

20 Q. Is the information contained in Exhibit

21 MMWRD true and correct to the best of your

22 knowledge?

1 A. It is.

2 Q. If I ask you the questions that are in MMWRD
3 5.0 today, would your answers be the same as they
4 are in that document?

5 A. They would.

6 MS. MOSBY: The District ask for admission of
7 Exhibit MMWRD 5.0 and tender the witness for cross.

8 JUDGE HAYNES: Is there any objections?

9 MS. BUELL: Your Honors, for the reasons stated
10 in staff's motion to strike, staff objects to the
11 admission of this testimony into the record.

12 JUDGE HAYNES: Mr. Casey?

13 MR. CASEY: The same, your Honors. We did file a
14 motion to strike. Subject to your ruling, we don't
15 have an objection.

16 JUDGE HAYNES: MMWRD Exhibit 5.0 is admitted into
17 the record subject to our ruling on the motion to
18 strike.

19

20

21

22

1 (Whereupon, MMWRD Exhibit
2 No. 5.0 was previously
3 marked for identification
4 and received in
5 evidence.)
6 Mr. Trotter?
7 MR. TROTTER: Here.
8 MS. MOSBY: The staff or Mr. Casey, have any
9 cross for Mr. Roach?
10 JUDGE HAYNES: Cross?
11 MS. BUELL: Staff has no cross for this witness,
12 your Honors.
13 MR. CASEY: No cross, your Honors.
14 JUDGE HAYNES: Thank you.
15 MS. MOSBY: Thank you, Mr. Roach.
16 THE WITNESS: Thank you.
17 MS. MOSBY: Mr. Trotter --
18 MR. TROTTER: Yes.
19 MS. MOSBY: -- this is Monica.
20 MR. TROTTER: Hi, hello.
21 MS. MOSBY: Hi.
22 JUDGE HAYNES: Please raise your right hand.

1 (Witness sworn.)

2 Thank you.

3 ROBERT SCOTT TROTTER,
4 called as a witness herein, having been first duly
5 sworn, was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY

8 MS. MOSBY:

9 Q. Mr. Trotter, would you please state your
10 full name for spell your last name for the record.

11 A. Robert Scott Trotter. That is spelled
12 T-r-o-t-t-e-r.

13 Q. Mr. Trotter, what is your occupation?

14 A. I'm an engineer -- civil engineer.

15 Q. And what's the name of your business?

16 A. Trotter and Associates, Incorporated.

17 Q. And where is Trotter and Associates located?

18 A. 16 North First Avenue, St. Charles,
19 Illinois, 60174.

20 Q. Now, Mr. Trotter, in this proceeding you
21 submitted Direct Testimony MMWRD 2.0 and Rebuttal
22 Testimony MMWRD 4.0; is that correct?

1 A. That is correct.

2 Q. Do you have any changes to that testimony,

3 Mr. Trotter?

4 A. I do not.

5 Q. Is the information contained in Exhibit

6 MMWRD 2.0 true and correct to the best of your

7 knowledge?

8 A. It is.

9 Q. If I ask you questions that are in MMWRD 2.0

10 today, would your answers be the same as they are in

11 that document?

12 A. That is correct, yes.

13 Q. Great. Is the information contained in

14 Exhibit MMWRD 4.0 true and correct to the best of

15 your knowledge?

16 A. It is.

17 Q. If I were to ask you questions that are in

18 MMWRD 4.0 today, would the answers be the same as

19 they are in that document?

20 A. They would be.

21 MS. MOSBY: The District asks for admission of

22 Exhibits MMWRD 2.0 and MMWRD 4.0 and tender the

1 witness for cross.

2 JUDGE HAYNES: Any objections?

3 MR. CASEY: For reasons stated in our -- in
4 Rockwell's motion to strike testimony, we object to
5 admission of the testimony but understanding your
6 Honors' previous ruling, we have nothing further at
7 this time.

8 JUDGE HAYNES: Staff?

9 MS. BUELL: Holds true for staff, your Honors.

10 JUDGE HAYNES: MMWRD Exhibit 2.0 and 4.0 are
11 admitted into the record subject to our ruling on
12 the motions to strike.

13 (Whereupon, MMWRD Exhibit
14 Nos. 2.0 & 4.0 were
15 previously marked for
16 identification and
17 received in evidence.)

18 Is there any cross-examination for the
19 witness?

20 MR. CASEY: Rockwell has no cross-examination for
21 this witness.

22 MS. BUELL: Staff has no cross, your Honors.

1 JUDGE HAYNES: Okay. Thank you, Mr. Trotter.

2 MR. TROTTER: Thank you.

3 JUDGE HILLIARD: Do you have anything else?

4 MS. MOSBY: No further witnesses.

5 JUDGE HAYNES: Okay. Someone remind me what the
6 briefing schedule is.

7 MS. BUELL: Your Honors, we had previously set a
8 schedule for initial briefs and reply briefs,
9 initial briefs June 15th and reply briefs June 22nd.

10 JUDGE HAYNES: And did we put a date on the
11 proposed order?

12 MS. BUELL: No, we did not.

13 JUDGE HAYNES: Anything further?

14 MR. CASEY: Only, your Honors, similar to my
15 request on the motion to strike responses and
16 replies if you could set forth a time by which those
17 pleadings should be served on the parties.

18 JUDGE HAYNES: Those dates are for e-mail service
19 by 5 p.m., for the briefs. Okay. Yes, Mr. Casey.

20 MR. CASEY: I just noticed that we had not set a
21 schedule on the proposed order, or I don't recall,
22 but given the 4th of July holiday, I was just

1 wondering if your Honors had an idea because we are
2 going to have exceptions and replies that we'll need
3 to file as well.

4 JUDGE HAYNES: I am on an abbreviated schedule
5 and I foresee getting out proposed orders pretty
6 quickly.

7 MR. CASEY: In that case, your Honors, instead of
8 setting a date certain, perhaps you can work at a
9 time frame upon which parties should file either
10 briefs on exceptions and replies.

11 JUDGE HAYNES: I think that depends on the date
12 when proposed orders come out.

13 Is there something more you are looking
14 for?

15 JUDGE HILLIARD: Do you need a specific amount of
16 time? It depends on where we are at.

17 MR. CASEY: I guess I'm trying to figure out how
18 we are going to establish a time frame if we don't
19 talk about it now.

20 JUDGE HILLIARD: We'll tell you what the time
21 frame is.

22 MR. CASEY: Then it's quite clear.

1 (Laughter.)

2 MS. BUELL: Or will be.

3 MR. CASEY: We'll wait to hear from you.

4 JUDGE HAYNES: Okay. There's nothing further
5 then this matter is marked heard and taken.

6 HEARD AND TAKEN.

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